

REMARKS

1. In response to the Office Action mailed December 1, 2006, Applicants respectfully request reconsideration. Claims 1-19 were originally presented for examination. In the outstanding office action claims 1-19 are rejected. By the foregoing Amendments, claims 1-19 have been cancelled, and claims 20-72 have been added. Thus, upon entry of this paper, claims 20-72 will be pending in this application. Of these fifty-three (53) claims, three (3) claims (claims 20, 38 and 56) are independent claims. Based upon the above Amendment and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Art of Record

2. Applicants acknowledge receipt of form PTO-892 listing additional references identified by the Examiner.

Drawings

3. Applicants thank the Examiner for indicating that the formal drawings received on April 16, 2004, have been accepted by the Examiner.

Claim Rejections Under 35 USC §112, Second Paragraph

4. Claim 17 is rejected under 35 U.S.C. §112, Second Paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants have cancelled claim 17 thereby rendering this rejection moot.

Claim Rejections

5. The Examiner has rejected claims 1-4, 7, and 19 as being anticipated by U.S. Patent No. 6,096,059 to Kuzma (hereinafter, "Kuzma") and by U.S. Patent No. 5,156,431 to Lowe (hereinafter, "Lowe"). The Examiner has also rejected claims 1-4, 10, and 19 as being anticipated by U.S. Patent No. 2,818,866 to Thomas (hereinafter, "Thomas"). Furthermore,

the Examiner has rejected claims 1-4, 12, 14-16 and 19 as being anticipated by U.S. Patent No. 1,546,078 to Huguley (hereinafter, "Huguley"). Also, the Examiner has rejected claims 1-4, 10-12, 13, and 19 as being anticipated by U.S. Patent No. 891,509 to Tanner (hereinafter, "Tanner"). Similarly, the Examiner has rejected claims 1-4, 18, and 19 as being anticipated by U.S. Patent No. 1,119,532 to Parks (hereinafter, "Parks") and by U.S. Patent No. 2,642,871 to Thuerig (hereinafter, "Thuerig"). The Examiner has also rejected claims 1-4 as being anticipated by U.S. Patent No. 4,873,979 to Hanna (hereinafter, "Hanna"). The Examiner has rejected claim 5 as being anticipated by Thuerig. The Examiner has further rejected claims 5 and 6 under 35.U.S.C §103 as being unpatentable over Hanna. The Examiner has also rejected claim 8 under 35 U.S.C. §103 as being unpatentable over Kuzma in view of U.S. Patent No. 4,898,183 to Kuzma (hereinafter, "Kuzma II"). Furthermore, the Examiner has rejected claim 9 as being unpatentable over Kuzma in view of Thuerig.

12. Applicants have cancelled claims 1-19 thereby rendering these rejections moot. Applicants have added new claims 20-72, including new independent claims 20, 38 and 56. As described in more detail below, Applicants respectfully submit that the art of record, taken alone or in combination, fail to teach or suggest all elements of Applicants' new claims 20, 30, 40 and 48. Each of the above recited references will be discussed in turn below.

13. Kuzma discloses a forceps device comprising a central section that extends to, and attaches to a working head (jaws). (*See, Kuzma, Abstract.*) In Kuzma, the central section runs the entire length of the device and "tapers into a thinner extension, which is formed at the end into as first jaw part" and a second jaw part is placed parallel to the thinner extension. (*See, Kuzma, col. 1, lns. 50-54.*) The thinner extension and the second jaw part are joined together by a pusher. (*See, Kuzma, col. 1, lns. 55-59.*) Also attached to the central section is an "activation mechanism" comprising a pair of leaf springs, attached to the central section, and a sliding bracket that slides along the central section to engage the pusher. (*See, Kuzma, col. 1, lns. 41-64.*) In Kuzma, when a surgeon squeezes the leaf springs, the moving bracket slides along the central section to move the pusher and thereby close the jaws of the forceps device. (*See, Kuzma, col. 2, lns. 1-5.*)

14. Lowe discloses a device for clamping and tightly holding a cap of a needle that comprises a "one-piece... frame [that] is generally U-shaped." (*See, Lowe, col. 2, lns. 24-*

52.) In Lowe, a needle cap is placed between the jaws of the clamp and the clamp arms are pushed together until the jaws tightly grip the needle cap. (*See, Lowe, col. 2, lns. 53-68.*) The jaws are held together by an engagement means attached to the U-shaped frame. (*See, Lowe, col. 2, lns. 53-68.*)

15. Thomas discloses a type of forceps for suturing the eye of a patient. (*See, Thomas, col. 1, lns. 15-20.*) The device of Thomas comprises a standard “tongs or forceps [that] terminate in a pair of coacting blades one of which consists of a pair of spaced tines and the other which consists of a flat pallet” that is specifically designed to place sutures in the eye of the patient that “do not go through the entire thickness of the retaining structure of the eyeball.” (*See, Thomas, col. 2, lns. 6-8.*) More specifically, the arrangement of Thomas uses the tines and flat pallet for “gripping and stabilizing the cornea or sclera and [are] prevented from penetrating too deeply.” (*See, Thomas, col. 1, lns. 25-26.*)

16. Huguley discloses a set of tongs “particularly adapted for use for holding dishes such as chinaware, cooking utensils and the like” to thereby “firmly grip the dish so that it will not slip.” (*See, Huguley, col. 1, lns. 8-16.*) The tongs of Huguley comprises two rigid arms terminating in a set of jaws, wherein the jaws having facing flat surfaces to tightly hold the dishes. (*See, Huguley, col. 2, lns. 62-103.*) In Huguley, the rigid arms are joined near the distal end of the arms, proximate to the jaws. (*See, Huguley, Figure 1.*)

17. Tanner discloses a pair of blacksmith tongs for gripping various articles such as pipes, bars or the like. (*See, Tanner, col. 1, lns. 1-55.*) The tongs of Tanner are designed to “firmly grasp the article... and firmly hold the grasped article against any movement.” (*See, Tanner, col. 1, lns. 43-44.*) Tanner accomplishes this through tongs that comprise two rigid arms that terminate in a pair of jaws. (*See, Tanner, col. 1, lns. 1-55.*) The rigid arms are connected at the distal end of the arms, proximate to the jaws. (*See, Tanner, col. 1, lns. 1-55.*) Tanner further discloses the jaws of Tanner are “arranged with diverging lips or gripping members.” (*See, Tanner, col. 1, lns. 1-20.*)

18. Parks discloses “a pair of tongs for handling bar iron while it is being heated and worked.” (*See, Parks, col. 1, lns. 10-12.*) The tongs of Parks comprise two rigid arms that terminate in a set of jaws and that are connected near the distal end of the arms, proximate to the jaws. (*See, Parks, col. 1, lns. 20-41.*) A first jaw of Parks comprises a V-shaped

projection while the other jaw of Parks has two V-shaped projections and one triangular shaped projection. (*See*, Parks, Figure 1.) It is this particular shape of the jaws that allows the tongs to accomplish the goal of “securely grasping the material regardless of its configuration.” (*See*, col. 1, lns. 1-50.)

19. Thuerig discloses a set of forceps that are “primarily useful in lifting syringes from a sterilizer and also useful in applying sponges in surgical operations.” (*See*, Thuerig, col. 1, lns. 1-7.) The forceps of Thuerig comprise two rigid arms that terminate in a pair of jaws. (*See*, Thuerig, col. 1, lns. 35-57.) The rigid arms of the device of Theurig are connected proximate to the jaws forming a scissor-like arrangement. (*See*, Thuerig, Figure 1.)

20. Hanna discloses a device used as “pincers or scissors.” (*See*, Hanna, Abstract.) The device comprises “two rigid longitudinal arms which are mutually pivoted about a defined transverse axis... to co-operate in a pinching or cutting action, respectively, by relative rotation of the two arms about the said axis.” (*See*, Hanna, col. 1, lns. 7-16.) In the Hanna device, both arms rotate about the same axis, and this rotation causes the ends of the jaws to close on one another to cut or pinch an object. (*See*, Hanna, col. 1, ln. 7-col. 2, ln. 43.)

21. Kuzma II discloses a gripping tool that is utilized for assisting in the implantation of a cochlear electrode assembly. (*See*, Kuzma II, col. 1, lns. 9-37.) In Kuzma II, a collar is necessarily fitted on the electrode assembly prior to implantation. (*See*, Kuzma II, col. 2, lns. 60-68.) The insertion tool has an edge that is then fitted under this collar, and is held therein. (*See*, Kuzma II, col. 3, lns. 40.) The surgeon then utilizes this tool to help control the insertion procedure. (*See*, Kuzma II, col. 3, ln. 40.)

New Claim 20

22. As will be briefly explained below, the above recited prior art, taken alone or in combination, completely fail to teach or suggest all elements of Applicants’ new claim 20.

23. Applicants respectfully submit that Kuzma fails to teach or suggest “a first flexible arm comprising contiguous first and second elongate regions... a second flexible arm comprising first and second contiguous elongate regions” as recited in Applicants’ claim 20. As noted above, Kuzma is directed to a device that uses a ***single central section*** (arm) that

terminates in a set of jaws. (*See*, Kuzma, col. 1, lns. 41-64.) Kuzma completely fails to teach or suggest that the device of Kuzma comprises “a first flexible arm [and] ... a second flexible arm.” Similarly, besides this complete lack of teaching of “a first flexible arm [and] ... a second flexible arm” Kuzma also fails to disclose “wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in claim 20. For at least these reasons, Applicants assert that Kuzma fails to teach or suggest all elements of Applicants’ claim 20.

24. As noted above, Lowe discloses a device that has a “one-piece... frame that is generally U-shaped.” (*See*, Lowe, col. 2, lns. 53-68.) As such, because Lowe only discloses a device utilizing a unitary frame, Applicants submit that Lowe fails to teach or suggest a device comprising “a first flexible arm ... a second flexible arm... wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as claimed in Applicants’ claim 20.

25. Furthermore, due to the above noted features of Lowe, it is clear that the device of Lowe is not a “manually adjustable forceps tool for controlling an implantable electrode assembly of a stimulating medical device” as recited in claim 20. As noted above the device of Lowe is specifically designed such that when the jaws of the U-shaped frame are pushed together, the device clamps and holds a cap of a needle. (*See*, Lowe, col. 2, lns. 53-68.) If the arrangement of Lowe were used to control an electrode array, the array would be damaged by the inherent clamping structure of Lowe. Therefore, for at least these reasons, Applicants assert that Lowe fails to teach or suggest all elements of Applicants’ claim 20.

26. As noted above, Thomas discloses a forceps device that is used to suture the eye of a patient. (*See*, Thomas, col. 1, lns. 15-20.) Thomas performs this suturing operation through the use of a pair of coacting blades on one arm, and a pair of spaced tines on the other arm. (*See*, Thomas, col. 1, lns. 6-8.) Therefore, because Thomas requires this specific jaw arrangement to suture the eye, and completely lacks any teaching that other jaw configurations are desirable or even possible, Applicants submit that Thomas fails to teach or suggest “a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a concave shaped region near said

distal end of said second region, said concave region configured to receive and support said electrode assembly" as recited in part in Applicants' claim 20. Not only does Thomas fail to teach "a concave region," but Thomas completely lacks any teaching or suggestion that the device may act as a "tool for controlling an implantable electrode assembly." Therefore, for at least these reasons, Applicants assert that Thomas fails to teach or suggest all elements of Applicants' claim 20.

27. As noted above, Huguley discloses a device for holding dishes and chinaware. (*See*, Huguley, col. 1, lns. 8-16.) Huguley accomplishes this through two rigid arms terminating in a set of jaws with facing flat surfaces that tightly grip the dishes to prevent any movement. (*See*, Huguley, col. 2, lns. 62-103.) Therefore, because Huguley requires this specific arrangement of flat surfaces to grip and hold dishes, it is clear that Huguley does not teach or suggest "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a concave shaped region near said distal end of said second region, said concave region configured to receive and support said electrode assembly" as recited in Applicants' claim 20.

28. Furthermore, Huguley fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 20. As discussed above, not only are the arms of Huguley rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the "proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 20. For at least the reasons discussed above, Applicants assert that Huguley fails to teach or suggest all elements of Applicants' claim 20.

29. Tanner completely fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 20. As discussed above, not only are the arms of Tanner rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having

the “proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 20.

30. Furthermore, as noted above Tanner discloses a pair of blacksmithing tongs designed to “firmly grasp the article... and firmly hold the grasped article against any movement.” (*See*, Tanner, col. 1, lns. 43-44.) As such, it is apparent that the tongs of Tanner are not a “manually adjustable forceps tool for controlling an implantable electrode assembly” as recited in claim 20. If the arrangement of Tanner were used to control an electrode array, the array would be damaged by the inherent gripping structure of Tanner. For at least the reasons discussed above, Applicants assert that Tanner fails to teach or suggest all elements of Applicants’ claim 20.

31. Parks completely fails to teach or suggest “a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 20. As discussed above, not only are the arms of Parks rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the “proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 20.

32. Furthermore, as noted above Parks discloses a pair of tongs designed for “handling bar iron while it is being heated and worked.” (*See*, Parks, col. 1, lns. 10-12.) To accomplish this goal, the Parks tongs terminate in a set of jaws comprising multiple V-shaped projections to secure the iron. (*See*, Parks, col. 1, lns. 1-50.) As such, it is apparent that the tongs of Parks do not teach or suggest “a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a concave shaped region near said distal end of said second region, said concave region configured to receive and support said electrode assembly” as recited in claim 20. For at least the reasons discussed above, Applicants assert that Parks fails to teach or suggest all elements of Applicants’ claim 20.

33. Thuerig completely fails to teach or suggest “a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally

fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 20. As discussed above, not only are the arms of Thuerig rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the "proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 20. For at least this reason, Applicants assert that Thuerig fails to teach or suggest all elements of Applicants' claim 20.

34. As noted above, Hanna discloses a device having two rigid arms that rotate around an axis, wherein the rotation causes the jaws attached to the arms to close. (See, Hanna, col. 1, ln. 7- col. 2, ln. 43.) As such, Applicants submit that Hanna completely lacks any teaching or suggestion of "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 20.

35. Furthermore, not only does Hanna fail to disclose that the arms are "pivotally connected," but Hanna also fails to disclose a "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a concave shaped region near said distal end of said second region, said concave region configured to receive and support said electrode assembly" as recited in Applicants' claim 20. As noted above, the jaws of Hanna are merely capable of cutting or pinching, and does not comprise a "concave region configured to receive and support said electrode assembly." Therefore, for at least these reasons, Applicants assert that Hanna fails to teach or suggest all elements of Applicants' claim 20.

36. As noted above, Kuzma II discloses a device that requires a collar to be placed on an electrode assembly prior to using the device of Kuzma II. (See, Kuzma II, col. 2, lns. 60-68.) When the collar is placed on the electrode assembly, the single arm device of Kuzma is slipped under the collar and allows the user to insert the electrode assembly. (See, Kuzma II, col. 3, ln. 40.) This disclosure of Kuzma II makes it clear that Kuzma II completely fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region

of said second arm" as recited in Applicants' claim 20.

37. It is also apparent that Kuzma II lacks any teaching or suggestion of "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a concave shaped region near said distal end of said second region, said concave region configured to receive and support said electrode assembly" as recited in Applicants' claim 20. Not only does Kuzma II disclose a rigid arm, but Kuzma II fails to disclose a "concave region configured to receive and support said electrode assembly." Therefore, for at least these reasons, Applicants assert that Kuzma II fails to teach or suggest all elements of Applicants' claim 20.

New Claim 38

38. As will be briefly explained below, the above recited prior art, taken alone or in combination, completely fail to teach or suggest all elements of Applicants' new claim 38.

39. Applicants respectfully submit that Kuzma fails to teach or suggest "a first flexible arm comprising contiguous first and second elongate regions... a second flexible arm comprising first and second contiguous elongate regions" as recited in Applicants' claim 38. As noted above, Kuzma is directed to a device that uses a *single central section* (arm) that terminates in a set of jaws. (See, Kuzma, col. 1, lns. 41-64.) Kuzma completely fails to teach or suggest that the device of Kuzma comprises "a first flexible arm [and] ... a second flexible arm." Similarly, besides this complete lack of teaching of "a first flexible arm [and] ... a second flexible arm" Kuzma also fails to disclose "wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in claim 38. For at least these reasons, Applicants assert that Kuzma fails to teach or suggest all elements of Applicants' claim 38.

40. As noted above, Lowe discloses a device that has a "one-piece... frame that is generally U-shaped." (See, Lowe, col. 2, lns. 53-68.) As such, because Lowe only discloses a device utilizing a unitary frame, Applicants submit that Lowe fails to teach or suggest a device comprising "a first flexible arm ... a second flexible arm... wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said

first region of said second arm" as claimed in Applicants' claim 38.

41. Furthermore, due to the above noted features of Lowe, it is clear that the device of Lowe is not a "manually adjustable forceps tool for controlling an implantable electrode assembly of a stimulating medical device" as recited in claim 38. As noted above the device of Lowe is specifically designed such that when the jaws of the U-shaped frame are pushed together, the device clamps and holds a cap of a needle. (*See*, Lowe, col. 2, lns. 53-68.) If the arrangement of Lowe were used to control an electrode array, the array would be damaged by the inherent clamping structure of Lowe. Therefore, for at least these reasons, Applicants assert that Lowe fails to teach or suggest all elements of Applicants' claim 38.

42. As noted above, Thomas discloses a forceps device that is used to suture the eye of a patient. (*See*, Thomas, col. 1, lns. 15-20.) Thomas performs this suturing operation through the use of a pair of coacting blades on one arm, and a pair of spaced tines on the other arm. (*See*, Thomas, col. 1, lns. 6-8.) Therefore, because Thomas requires this specific jaw arrangement to suture the eye, and completely lacks any teaching that other jaw configurations are desirable or even possible, Applicants submit that Thomas fails to teach or suggest "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a substantially forked shaped region near said distal end of said second region, said forked region configured to receive and support said electrode assembly" as recited in part in Applicants' claim 38. Not only does Thomas fail to teach "a concave region," but Thomas completely lacks any teaching or suggestion that the device may act as a "tool for controlling an implantable electrode assembly." Therefore, for at least these reasons, Applicants assert that Thomas fails to teach or suggest all elements of Applicants' claim 38.

43. As noted above, Huguley discloses a device for holding dishes and chinaware. (*See*, Huguley, col. 1, lns. 8-16.) Huguley accomplishes this through two rigid arms terminating in a set of jaws with facing flat surfaces that tightly grip the dishes to prevent any movement. (*See*, Huguley, col. 2, lns. 62-103.) Therefore, because Huguley requires this specific arrangement of flat surfaces to grip and hold dishes, it is clear that Huguley does not teach or suggest "a first flexible arm comprising contiguous first and second elongate regions each

having proximal and distal ends, said second region having a substantially forked shaped region near said distal end of said second region, said forked region configured to receive and support said electrode assembly" as recited in Applicants' claim 38.

44. Furthermore, Huguley fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38. As discussed above, not only are the arms of Huguley rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the "proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38. For at least the reasons discussed above, Applicants assert that Huguley fails to teach or suggest all elements of Applicants' claim 38.

45. Tanner completely fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38. As discussed above, not only are the arms of Tanner rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the "proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38.

46. Furthermore, as noted above Tanner discloses a pair of blacksmithing tongs designed to "firmly grasp the article... and firmly hold the grasped article against any movement." (See, Tanner, col. 1, lns. 43-44.) As such, it is apparent that the tongs of Tanner are not a "manually adjustable forceps tool for controlling an implantable electrode assembly" as recited in claim 38. If the arrangement of Tanner were used to control an electrode array, the array would be damaged by the inherent gripping structure of Tanner. For at least the reasons discussed above, Applicants assert that Tanner fails to teach or suggest all elements of Applicants' claim 38.

47. Parks completely fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally

fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38. As discussed above, not only are the arms of Parks rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the "proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38.

48. Furthermore, as noted above Parks discloses a pair of tongs designed for "handling bar iron while it is being heated and worked." (*See*, Parks, col. 1, lns. 10-12.) To accomplish this goal, the Parks tongs terminate in a set of jaws comprising multiple V-shaped projections to secure the iron. (*See*, Parks, col. 1, lns. 1-50.) As such, it is apparent that the tongs of Parks do not teach or suggest "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a substantially forked shaped region near said distal end of said second region, said forked region configured to receive and support said electrode assembly" as recited in claim 38. For at least the reasons discussed above, Applicants assert that Parks fails to teach or suggest all elements of Applicants' claim 38.

49. Thuerig completely fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38. As discussed above, not only are the arms of Thuerig rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the "proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38. For at least this reason, Applicants assert that Thuerig fails to teach or suggest all elements of Applicants' claim 38.

50. As noted above, Hanna discloses a device having two rigid arms that rotate around an axis, wherein the rotation causes the jaws attached to the arms to close. (*See*, Hanna, col. 1, ln. 7- col. 2, ln. 43.) As such, Applicants submit that Hanna completely lacks any teaching or suggestion of "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region

of said second arm" as recited in Applicants claim 38.

51. Furthermore, not only does Hanna fail to disclose that that the arms are "pivotally connected," but Hanna also fails to disclose a "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a substantially forked shaped region near said distal end of said second region, said forked region configured to receive and support said electrode assembly" as recited in Applicants' claim 38. As noted above, the jaws of Hanna are merely capable of cutting or pincing, and does not comprise a "forked region configured to receive and support said electrode assembly." Therefore, for at least these reasons, Applicants assert that Hanna fails to teach or suggest all elements of Applicants' claim 38.

52. Furthermore, not only does Hanna fail to disclose that that the arms are "pivotally connected," but Hanna also fails to disclose a "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a concave shaped region near said distal end of said second region, said concave region configured to receive and support said electrode assembly" as recited in Applicants' claim 20. As noted above, the jaws of Hanna are merely capable of cutting or pincing, and does not comprise a "concave region configured to receive and support said electrode assembly." Therefore, for at least these reasons, Applicants assert that Hanna fails to teach or suggest all elements of Applicants' claim 20.

53. As noted above, Kuzma II discloses a device that requires a collar to be placed on an electrode assembly prior to using the device of Kuzma II. (*See*, Kuzma II, col. 2, lns. 60-68.) When the collar is placed on the electrode assembly, the single arm device of Kuzma is slipped under the collar and allows the user to insert the electrode assembly. (*See*, Kuzma II, col. 3, ln. 40.) This disclosure of Kuzma II makes it clear that Kuzma II completely fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 38.

54. It is also apparent that Kuzma II lacks any teaching or suggestion of "a first flexible arm comprising contiguous first and second elongate regions each having proximal

and distal ends, said second region having a substantially forked shaped region near said distal end of said second region, said forked region configured to receive and support said electrode assembly" as recited in Applicants' claim 38. Not only does Kuzma II disclose a rigid arm, but Kuzma II fails to disclose a "forked region configured to receive and support said electrode assembly." Therefore, for at least these reasons, Applicants assert that Kuzma II fails to teach or suggest all elements of Applicants' claim 38.

New Claim 56

55. As will be briefly explained below, the above recited prior art, taken alone or in combination, completely fail to teach or suggest all elements of Applicants' new claim 56.

56. Applicants respectfully submit that Kuzma fails to teach or suggest "a first flexible arm comprising contiguous first and second elongate regions... a second flexible arm comprising first and second contiguous elongate regions" as recited in Applicants' claim 56. As noted above, Kuzma is directed to a device that uses a *single central section* (arm) that terminates in a set of jaws. (See, Kuzma, col. 1, lns. 41-64.) Kuzma completely fails to teach or suggest that the device of Kuzma comprises "a first flexible arm [and] ... a second flexible arm." Similarly, besides this complete lack of teaching of "a first flexible arm [and] ... a second flexible arm" Kuzma also fails to disclose "wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in claim 56. For at least these reasons, Applicants assert that Kuzma fails to teach or suggest all elements of Applicants' claim 56.

57. As noted above, Lowe discloses a device that has a "one-piece... frame that is generally U-shaped." (See, Lowe, col. 2, lns. 53-68.) As such, because Lowe only discloses a device utilizing a unitary frame, Applicants submit that Lowe fails to teach or suggest a device comprising "a first flexible arm ... a second flexible arm... wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as claimed in Applicants' claim 56.

58. Furthermore, due to the above noted features of Lowe, it is clear that the device of Lowe is not a "manually adjustable forceps tool for controlling an implantable electrode

assembly of a stimulating medical device" as recited in claim 56. As noted above the device of Lowe is specifically designed such that when the jaws of the U-shaped frame are pushed together, the device clamps and holds a cap of a needle. (*See*, Lowe, col. 2, Ins. 53-68.) If the arrangement of Lowe were used to control an electrode array, the array would be damaged by the inherent clamping structure of Lowe. Therefore, for at least these reasons, Applicants assert that Lowe fails to teach or suggest all elements of Applicants' claim 56.

59. As noted above, Thomas discloses a forceps device that is used to suture the eye of a patient. (*See*, Thomas, col. 1, Ins. 15-20.) Thomas performs this suturing operation through the use of a pair of coacting blades on one arm, and a pair of spaced tines on the other arm. (*See*, Thomas, col. 1, Ins. 6-8.) Therefore, because Thomas requires this specific jaw arrangement to suture the eye, and completely lacks any teaching that other jaw configurations are desirable or even possible, Applicants submit that Thomas fails to teach or suggest "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a looped shaped region near said distal end of said second region, said looped region configured to receive and support said electrode assembly" as recited in part in Applicants' claim 56. Not only does Thomas fail to teach "a concave region," but Thomas completely lacks any teaching or suggestion that the device may act as a "tool for controlling an implantable electrode assembly." Therefore, for at least these reasons, Applicants assert that Thomas fails to teach or suggest all elements of Applicants' claim 56.

60. As noted above, Huguley discloses a device for holding dishes and chinaware. (*See*, Huguley, col. 1, Ins. 8-16.) Huguley accomplishes this through two rigid arms terminating in a set of jaws with facing flat surfaces that tightly grip the dishes to prevent any movement. (*See*, Huguley, col. 2, Ins. 62-103.) Therefore, because Huguley requires this specific arrangement of flat surfaces to grip and hold dishes, it is clear that Huguley does not teach or suggest "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a looped shaped region near said distal end of said second region, said looped region configured to receive and support said electrode assembly" as recited in Applicants' claim 56.

61. Furthermore, Huguley fails to teach or suggest “a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56. As discussed above, not only are the arms of Huguley rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the “proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56. For at least the reasons discussed above, Applicants assert that Huguley fails to teach or suggest all elements of Applicants’ claim 56.

62. Tanner completely fails to teach or suggest “a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56. As discussed above, not only are the arms of Tanner rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the “proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56.

63. Furthermore, as noted above Tanner discloses a pair of blacksmithing tongs designed to “firmly grasp the article... and firmly hold the grasped article against any movement.” (See, Tanner, col. 1, lns. 43-44.) As such, it is apparent that the tongs of Tanner are not a “manually adjustable forceps tool for controlling an implantable electrode assembly” as recited in claim 56. If the arrangement of Tanner were used to control an electrode array, the array would be damaged by the inherent gripping structure of Tanner. For at least the reasons discussed above, Applicants assert that Tanner fails to teach or suggest all elements of Applicants’ claim 56.

64. Parks completely fails to teach or suggest “a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56. As discussed above, not only are the arms of Parks rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the

“proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56.

65. Furthermore, as noted above Parks discloses a pair of tongs designed for “handling bar iron while it is being heated and worked.” (*See*, Parks, col. 1, lns. 10-12.) To accomplish this goal, the Parks tongs terminate in a set of jaws comprising multiple V-shaped projections to secure the iron. (*See*, Parks, col. 1, lns. 1-50.) As such, it is apparent that the tongs of Parks do not teach or suggest “a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a looped shaped region near said distal end of said second region, said looped region configured to receive and support said electrode assembly” as recited in claim 56. For at least the reasons discussed above, Applicants assert that Parks fails to teach or suggest all elements of Applicants’ claim 56.

66. Thuerig completely fails to teach or suggest “a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56. As discussed above, not only are the arms of Thuerig rigid metal, but the arms are also joined near the distal ends of the arms, proximate to the jaws, rather than having the “proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56. For at least this reason, Applicants assert that Thuerig fails to teach or suggest all elements of Applicants’ claim 56.

67. As noted above, Hanna discloses a device having two rigid arms that rotate around an axis, wherein the rotation causes the jaws attached to the arms to close. (*See*, Hanna, col. 1, ln. 7- col. 2, ln. 43.) As such, Applicants submit that Hanna completely lacks any teaching or suggestion of “a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm” as recited in Applicants’ claim 56.

68. Furthermore, not only does Hanna fail to disclose that the arms are “pivotally connected,” but Hanna also fails to disclose a “a first flexible arm comprising

contiguous first and second elongate regions each having proximal and distal ends, said second region having a looped shaped region near said distal end of said second region, said looped region configured to receive and support said electrode assembly" as recited in Applicants' claim 56. As noted above, the jaws of Hanna are merely capable of cutting or pinching, and does not comprise a "looped region configured to receive and support said electrode assembly." Therefore, for at least these reasons, Applicants assert that Hanna fails to teach or suggest all elements of Applicants' claim 56.

69. As noted above, Kuzma II discloses a device that requires a collar to be placed on an electrode assembly prior to using the device of Kuzma II. (See, Kuzma II, col. 2, lns. 60-68.) When the collar is placed on the electrode assembly, the single arm device of Kuzma is slipped under the collar and allows the user to insert the electrode assembly. (See, Kuzma II, col. 3, ln. 40.) This disclosure of Kuzma II makes it clear that Kuzma II completely fails to teach or suggest "a first flexible arm... a second flexible arm ...wherein said proximal end of said first region of said first arm is pivotally fixed to the proximal end of said first region of said second arm" as recited in Applicants' claim 56.

70. It is also apparent that Kuzma II lacks any teaching or suggestion of "a first flexible arm comprising contiguous first and second elongate regions each having proximal and distal ends, said second region having a looped shaped region near said distal end of said second region, said looped region configured to receive and support said electrode assembly" as recited in Applicants' claim 56. Not only does Kuzma II disclose a rigid arm, but Kuzma II fails to disclose a "looped region configured to receive and support said electrode assembly." Therefore, for at least these reasons, Applicants assert that Kuzma II fails to teach or suggest all elements of Applicants' claim 56.

Lack of Motivation to Combine References

71. Although not discussed in detail herein, Applicants respectfully assert that there is not motivation to combine the applied references as proposed by the Examiner in the Section 103 rejections. Accordingly, the lack of Applicants' argument in this regard should not be taken as an admission of agreement with or acquiescence of any such assertion made by the

Examiner in the outstanding Office Action.

Dependent Claims

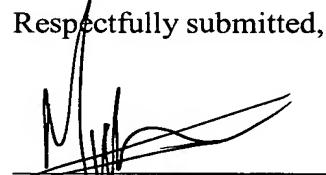
72. The dependent claims incorporate all of the subject matter of their respective independent claims and add additional subject matter, which makes them a *fortiori* and independently patentable over the art of record. Accordingly, Applicant respectfully requests that the outstanding rejections of the dependent claims be reconsidered and withdrawn.

Conclusion

73. In view of the foregoing, this application should be in condition for allowance. A notice to his effect is respectfully requested.

74. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

Respectfully submitted,



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